

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL TAROLA,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. RIF-00-0004

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair and GERALD L. MORGEN, Vice Chair. The hearing was held at the Washington State University, Compton Union Building, Conference 224, Pullman, Washington, on December 14, 2000. LEANA D. LAMB, Member did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Michael Tarola was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Respondent Washington State University was represented by Donna Stambaugh, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a reduction in force for lack of funds.

1.4 **Citations Discussed.** WAC 251-10-030(1); WAC 358-30-170; O’Gorman v. Central Washington University, PAB No. L93-018 (1995); Van Jepmond v. Employment Security Dep’t,

1 PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989); University of
2 Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979) rev. denied 93 Wn.2d 1013
3 (1980); Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995). Wilkes v. Centralia
4 College, PAB No. 3678-L2 (1994); Cowden v. University of Washington, PAB No. L93-038 (1994)
5 (Condon, Hrgs, Exam.); WAC 251-10-030.

6 7 **MOTION**

8 By order dated July 13, 2000, the Board denied Respondent's Motion for Stay of Damages stating
9 that Respondent had failed to show that Appellant had been acting in bad faith or refusing to
10 cooperate in the scheduling process.

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12 At the outset of the hearing, Respondent renewed its prior motion to stay and asked the Board to
13 take the matter under advisement. Respondent argued that it had made early attempts to schedule
14 the appeal, that it was available for hearing on June 29, 2000, but that Appellant argued that he had
15 minimal time to prepare adequate discovery. Respondent argues, however, that Appellant did not
16 request discovery until October 12, 2000. Respondent requests that its motion be granted and that a
17 stay of damages be imposed from July 29, 2000 through December 14, 2000.
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20 Appellant renewed his argument that the dates previously provided by Respondent provided for
21 minimally adequate discovery time and that the processing of the appeal has been expeditious and
22 timely.
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1 The Board took the motion under advisement. Respondent has failed to bring forth any persuasive
2 evidence and we find no basis to grant the stay of damages. Therefore, Respondent's motion for
3 stay of damages is denied.
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5 6 **II. FINDINGS OF FACT**

7 2.1 Appellant Michael Tarola was an Engineering Technician II and permanent employee for
8 Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06
9 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a
10 timely appeal with the Personnel Appeals Board on March 27, 2000.
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12 2.2 Appellant began his employment with Washington State University on September 1, 1977.
13 Appellant worked in the College of Chemical Engineering and Architecture and his duties, in part,
14 included the maintenance of complex laboratory equipment, assisting professors, and assisting
15 students and providing technical expertise in the development of their various projects, experiments
16 and research.
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19 2.3 In Fiscal Year (FY) 1996-97, Washington State University (WSU) began to experience a
20 steady decline in the average annual student enrollment. The average annual enrollment for FY
21 1996-97 was 16,852 students. In FY 1997-98, the average annual student enrollment had declined
22 to 16,821.
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25 2.4 The decline in student enrollment created a substantial decline in revenues for the University
26 from the loss of tuition dollars, especially the decline in non-resident student tuition which is

1 approximately 3.3 times higher than resident student tuition. A large percentage of the decline in
2 enrollment was from non-resident students.

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4 2.5 In addition to tuition revenues, the University receives funds from state appropriations based
5 on the University meeting projected enrollment numbers. The Washington State Legislature
6 established a projected enrollment number of 17,403 students for FY 1996-97 and FY 1997-98.
7 Failure to meet the targeted enrollment number established by the state resulted in a reduction of
8 state money.

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11 2.6 When the Legislature met in the Spring of 1998, they reduced the projected enrollment
12 target by 451 students and reduced the University's budget accordingly. As a result, the University
13 was required to return \$597,000 in enrollment funding for the 1998 Supplemental Budget to the
14 Legislature.

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16 2.7 The projected shortfall for Academic Affairs for FY 00 was projected at \$3,124,900.

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19 2.8 By memo dated December 9, 1998, to the Council of Deans, Gretchen M. Bataille, Provost,
20 addressed the budget deficits and potential strategies to balance the Academic Affairs budget
21 reductions based on projected low enrollment numbers and the corresponding reduction in funds
22 from tuition revenues. Provost Bataille provided each department with a target by which to reduce
23 their budget and directed them to prepare reports addressing the budget reductions in their
24 departments.

1 2.9 Dr. Anjan Bose, Dean of the College of Engineering and Architecture, developed a budget
2 plan for his department which included a reduction of approximately \$189,000 per year for two
3 years. By memo dated February 26, 1999, Dr. Bose directed his department chairs, school director
4 and associated deans to devise plans for their budgets for the two years based on the funds allocated
5 to their individual departments. Dr. Bose acknowledged that the departments could not take the
6 reductions without affecting positions, but emphasized his desire to minimize any effects on current
7 employees.

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10 2.10 Through the budgeting process, proposed reductions in the College of Engineering and
11 Architecture were identified which included, in part, the reduction of classified positions.

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13 2.11 Lisa Gehring, Human Resource Consultant, was responsible for determining Appellant's
14 layoff options. Ms. Gehring reviewed Appellant's employment history and met with Appellant on
15 numerous occasions to advise him on available options.

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17 2.12 By letter dated June 8, 1999, Dean Bose informed Appellant of his layoff due to lack of
18 funds. He informed Appellant that his position as an Engineering Technician III was being
19 abolished effective June 30, 1999. Appellant had selected an Engineering Technician II position in
20 the Civil and Environmental Engineering to claim, and Dr. Bose directed him to report to his new
21 position on July 1, 1999.

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24 2.13 By letter dated June 24, 1999, Gretchen M. Bataille, Provost and Academic Vice President,
25 informed Appellant that the June 8, 1999 layoff letter was being rescinded and that he should
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1 continue to report to his current position and duties in the Department of Chemical Engineering
2 until further notice. The reason for rescinding the letter was to allow Appellant's union
3 representative to "provide further input as he requested."
4

5 2.14 Following the June 8, 1999 letter, Appellant was again informed that his Chemical
6 Engineering position was being to be abolished, however, that notice was subsequently rescinded
7 on September 20, 1999.
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9 2.15 Ms. Gehring continued to work with Appellant and to search for layoff options. On
10 December 6, 1999, Appellant received a Notification of Layoff and Options form which advised
11 him that his position was to be abolished and of his layoff options. Appellant's first option within
12 the class from which he was being laid off was in the Engineering Technician II class. Within the
13 Engineering Technician (ET) II class there were three specific positions with the working titles of
14 1) ET II - Computer Numerically Controlled Machinist, 2) ET II - Computer Support, and 3) ET II -
15 Soils/Irrigation. Appellant's second option, an Engineering Technician I, was a lower class in the
16 same class series from which he was being laid off.
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20 2.16 In November 1999, Respondent adopted specific positions requirements for the three
21 Engineering positions.
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23 2.17 Appellant selected his first option. Ms. Gehring advised Appellant that the ET II positions
24 had essential job elements that he needed to meet in order to be considered for the positions.
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1 2.18 Subsequently, Respondent developed an examination to determine whether Appellant met
2 the special position requirements of the three positions. However, the results of the exams showed
3 that Appellant did not have the necessary knowledge to meet the specific position requirements.
4 Appellant did not receive passing scores.

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6 2.19 In addition to the written examination, on February 4, 2000, Appellant was interviewed by
7 Dr. Ralph Cavalieri, the Department Chair of the Department of Biological Systems Engineering,
8 Professor Claudio Stockle, and Assistant Professor Shulin Chen, to determine whether Appellant
9 met the specific position requirements of the ET II - Soils/Irrigation position. Dr. Stockle
10 supervised the position and Dr. Shulin Chen was the research faculty member and technical expert.
11 Their overall evaluation was that Appellant did not have the background or specific knowledge
12 critical to successfully fill the Soils/Irrigation position. They also concluded that it was improbable
13 that Appellant would obtain the necessary experience within six months and that more likely than
14 not, would take him a period of years to obtain the necessary requirements.
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17 2.20 Following the test results, Ms. Gehring completed a new options form for Appellant. Ms.
18 Gehring determined that Appellant had no options in the class from which he was being laid off and
19 no options in classes in which he previously held permanent status because he had held only one
20 classified position. On February 11, 2000, Appellant received an updated Notification of Layoff
21 and Options form. The option available to Appellant was an Engineering Technician I in Prosser,
22 which was in a lower class in the same class series from which he was being laid off.
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1 2.21 Because Appellant had no layoff options within his layoff unit and because the Engineering
2 Technician I position was located more than 50 miles from the Pullman campus, Respondent
3 provided Appellant with University-Wide options. These are positions that are held by
4 probationary employees or positions which are vacant. Ms. Gehring requested that Appellant
5 review the lists of positions, eliminate the ones he did not want to be considered for and rate the
6 options he was willing to consider in order of preference. Appellant selected a Sprinkler
7 Maintenance Worker position as his first option.

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10 2.22 By letter dated March 2, 2000, Rom J. Markin, Interim provost and Academic Vice
11 President, notified Appellant that his position as an Engineering Technician II in the College of
12 Engineering and Architecture/Chemical Engineering Department was being abolished due to “lack
13 of funds, lack of work, or good faith reorganization.” Appellant’s position was abolished effective
14 March 24, 2000. Appellant was appointed to his layoff option as a Sprinkler Maintenance Worker.

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16 2.23 WAC 251-01-390 defines specific position requirements as “elements which are essential
17 job elements.” WAC 251-01-145 defines essential job elements as “knowledge, skills and abilities
18 which persons must possess in order to perform the duties of a class or a specific position in a
19 class.”
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22 2.24 The College of Engineering and Architecture routinely employs teaching/laboratory
23 assistants. Appellant testified that these positions were utilized to perform the duties of his job after
24 he was laid off. Dean Anjan Bose denied that the teaching/laboratory assistants were assigned
25 Appellant’s former duties and he further testified that duties assigned to teaching/laboratory
26 assistants are separate and different from Appellant’s former duties. Dean Bose further testified

1 that teaching/laboratory assistants do not perform the technical duties which were previously
2 assigned to Appellant. We find no evidence to support Appellant's opinion that teaching/laboratory
3 assistants were utilized to perform the duties of his position.

4 5 **III. ARGUMENTS OF THE PARTIES**

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7 3.1 Respondent argues that the University was faced with a severe lack of funds and that it went
8 through an extensive process to determine where to make mandatory cuts throughout the academic
9 institution. Respondent asserts that the budget cuts were permanent and carried over from one year
10 to the next. Respondent argues that when budget reductions are necessary, it is left to the discretion
11 of management as to where to make those cuts and that management ultimately concluded that they
12 could do without Appellant's position.

13 Respondent argues that it performed a comprehensive and thorough search to determine
14 Appellant's layoff options. Respondent argues that after Ms. Gehring performed job analyses of the
15 available positions, she determined what essential job requirements needed to be met. Respondent
16 asserts that Appellant did not pass the exams for the three Engineering Technician II positions and
17 that he did not have the requisite knowledge, skills and abilities to meet the specific requirements of
18 the positions. Respondent argues that it followed the rules, offered Appellant the appropriate
19 options, and that Appellant rated the positions, and received his first option. Respondent further
20 argues that the specific position requirements were in place prior to Appellant's layoff. Respondent
21 argues that no teaching assistants were hired after Appellant's layoff and that there is no evidence to
22 show that Appellant's former duties are being performed by teaching assistants. Respondent asserts
23 that it has proven that a lack of funds existed, that management used its discretion to abolish
24 Appellant's position, and that Appellant received the appropriate layoff options.
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2 3.2 Appellant does not dispute that the University was faced with a legitimate lack of funds.
3 However, Appellant argues that his layoff could have been done in a different way, that he was a 13
4 year employee, and that he was well trained and performed well. Appellant asserts that other
5 options should have been considered, including cutting his position to less than 100 percent time.
6 Appellant argues that he was informed of his layoff and options on numerous occasions and then
7 suddenly his layoff and options would be rescinded for various reasons.

8 Appellant argues that the timing and the placement of specific position requirements on the
9 Engineering Technician II positions is important to consider because the specific position
10 requirements were imposed after he was initially offered the positions. Appellant argues that had
11 the specific position requirements not been placed on the Engineering Technician positions, he
12 would have met the minimum qualifications. Appellant argues that his layoff procedure had been
13 going on since June 99, that his department was anticipating his layoff well in advance, and that
14 they hired two teaching assistant to perform his duties after his position had been eliminated.
15 Appellant asserts that his layoff option resulted in a severe decrease in pay, and he asks that his
16 layoff be rescinded and he be reinstated.
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20 **IV. CONCLUSIONS OF LAW**

21 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
22 herein.

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24 4.2 Respondent may layoff an employee for lack of funds or lack of work. WAC 251-10-
25 030(1). In an appeal of a layoff or reduction-in-force action, Respondent has the burden of proof.
26 WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible

1 evidence that it laid the employee off for the reasons stated in the RIF letter. O’Gorman v. Central
2 Washington University, PAB No. L93-018 (1995).

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4 4.3 This Board continues to hold that management has discretion in determining which positions
5 to eliminate and which budgets to reduce when faced with a demonstrated lack of funds. In
6 instituting a RIF for lack of funds, agencies have discretion to determine in good faith which
7 positions to eliminate. Van Jepmond v. Employment Security Dep’t, PAB No. L86-15 (1988), aff’d
8 Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The positions to be eliminated and those to be
9 retained when the budget is reduced is left to the good faith judgment of management. University
10 of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979) rev. denied 93 Wn.2d 1013
11 (1980). Respondent was within its right to review its existing programs and reduce staff as it
12 deemed appropriate. Sinclair v. Dep’t of General Administration, PAB No. L93-023 (1995). In
13 Wilkes v. Centralia College, PAB No. 3678-L2 (1994), the Board reversed the hearings examiner
14 and held that Respondent had sustained that there was a lack of funds and that the decision as to
15 where to make budget cuts was the responsibility of the Respondent. In Cowden v. University of
16 Washington, PAB No. L93-038 (1994) (Condon, Hrgs, Exam.), the Board held that it could not
17 second guess management decisions with respect to a layoff when there is a documented lack of
18 funds.
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22 4.4 The first issue here is whether Respondent complied with WAC 251-10-030(1) when it laid
23 off Appellant because of a lack of funds. WAC 251-10-030(1), in part, permits an appointing
24 authority to layoff or reduce the number of working hours or the work year of an employee because
25 of a lack of funds. Respondent has provided credible evidence that a legitimate lack of funds
26 existed and that Appellant’s reduction in force was necessitated because of that lack of funds.

1 Washington State University was required to implement a reduction in funding and Respondent
2 appropriately used its discretion to eliminate Appellant's position. Respondent has met its burden
3 of proof that it complied with WAC 251-10-030(1) when it eliminated Appellant's position.
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5 4.5 The second issue presented is whether Respondent provided Appellant with appropriate
6 layoff options. WAC 251-10-030, subsection, (4) indicates:

7 Within the layoff unit, a permanent status employee scheduled for layoff
8 shall be offered employment options to position(s):

9 (a) For which he/she meets any specific position requirements;

10 (b) Which are comparable, as determined by the personnel officer; and

11 (c) Which are in:

12 (i) Class(es) in which the employee has held permanent status which
13 have the same or lower salary range maximum as the current class;

14 (ii) Lower class(es) in those same class series for which the employee
15 is qualified.
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17 The employee may exercise either option subsection (4) (c) (i) or (ii) of this section
18 provided that the employee being replaced is the least senior in a comparable
19 position in the class and has less layoff seniority than the employee replacing
20 him/her. . . .
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22 4.6 Respondent correctly determined that Appellant had one layoff option under this portion of
23 the statute. However, that option was more than 50 miles from the Pullman campus. Respondent
24 further determined that specific position requirements were necessary in the three Engineer
25 Technician II positions. Adopting the specific position requirements was within Respondent's
26 discretion once it determined that there were essential job elements in order for an individual to
perform the duties of a class or a specific position.

4.7 Furthermore, subsection (5) of the rule indicates:

. . . a permanent employee scheduled for layoff who has no options available under
subsection (4) of this section shall be offered position(s) as follows:

1 (a) The personnel officer will offer in writing not less than three positions from
2 among the highest available classes (unless the total available is less than three);
provided that any position(s) offered must be:

3 (i) At the same level or lower than the class from which the employee is being laid
off; and

4 (ii) Vacant or held by a provisional, temporary, or probationary employee; and

5 (iii) In a class for which the employee being laid off meets the minimum
qualifications and can pass the appropriate qualifying examination.

6 Respondent conducted a thorough and extensive search of layoff of additional options. Appellant
7 was given his final layoff options, he selected a Sprinkler Maintenance Worker position, and he was
8 ultimately appointed to the position.

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10 4.8 No evidence was presented to support Appellant's contention that teaching assistants were
11 hired to perform the duties of his position.

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13 4.9 Respondent has met its burden of proof that a lack of funds existed and the appeal of
14 Michael Tarola should be denied.

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17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Tarola is denied.

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20 DATED this _____ day of _____, 2001.

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22 WASHINGTON STATE PERSONNEL APPEALS BOARD

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24 _____
25 Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair